



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 3

PHOTOGRAPHERS AND PHOTOFINISHERS

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Portions of the Sales and Use Tax and Service Provider Tax statutes referred to in this bulletin can be found at the end of the bulletin in Attachment #1. Also attached are applicable Sales and Use Tax Rules.

Photographers and photofinishers are engaged in the businesses of (1) producing and selling tangible personal property, the sale of which is subject to the Sales and Use Tax (Title 36, Part 3); and (2) providing fabrication services, the sale of which is subject to the Service Provider Tax (Title 36, Part 4, Chapter 358). Accordingly, they are required to be registered as sellers with Maine Revenue Services and to collect and report Sales Tax and Service Provider Tax on their taxable sales. As producers of tangible personal property for sale, they are entitled to certain exemptions on their purchases of tangible personal property.

1. SALES

a. Taxable Sales. Photographers and photofinishers are the producers and sellers of tangible personal property and fabrication services. Examples of taxable sales include, but are not limited to:

- i. Sales of photographs, portraits and videotapes, including the sale of a digital product delivered electronically;
- ii. Developing and printing of photographs and portraits;
- iii. Printing positives from a customer's negatives;
- iv. Filming weddings, anniversaries, birthdays and other special events and then providing the film on video tape, compact disk or other medium, including providing the product digitally; and
- v. Sales of tangible personal property such as film, flashbulbs, batteries, frames, cameras and other photographic equipment and supplies.

Tax must be charged based on the entire sale price of the property sold to a customer for use or consumption, including any services that are a part of the sale. "Sale for use or consumption" includes not only sales for personal consumption, such as family portraits or wedding pictures, but also sales for use in a business activity, such as a sale of a photograph to a newspaper or magazine for publication.

A sitting charge, where no photographs are sold as a result, is not a sale of tangible personal property or fabrication services and is not taxable. If a sale does result, however, the total amount of the sale price, including the sitting charge, is subject to tax.

b. Fabrication services. "Fabrication services" are production activities that transform tangible personal property provided by the customer into a different form, character or composition. Charges for fabrication services are subject to the service provider tax. Examples of fabrication services include, but are not limited to:

- i. Production of photograph prints or images of any kind from a compact disk, floppy disk or other digital storage medium;
- ii. Developing of photographic film to make negatives;
- iii. Developing of photographic film to make slides;
- iv. Developing of photographic microfilm and microfiche;
- v. Production of video tapes.

For more information concerning "fabrication services", see Instruction Bulletin #46.

c. Exempt sales.

i. Sales for resale. A sale for resale in the form of tangible personal property is not taxable. A photographer or photofinisher, when selling to others for resale, must obtain from the customer a resale certificate in substantially the form set forth in Rule No. 301. Otherwise, the burden of proving that a sale actually was for resale is upon the person making the sale. More detailed information regarding sales for resale is found in Rule No. 301.

ii. Sales to exempt organizations. Sales made directly to the federal government, the State of Maine or any political subdivision of the State of Maine (such as counties, cities or towns), or to any agency or instrumentality of any of the above governments, are exempt from sales tax. The Sales and Use Tax Law also provides exemptions for various other organizations, such as hospitals, schools, regularly organized churches or houses of religious worship, and certain other organizations. More detailed information regarding government sales and sales to other exempt entities is found in Rule No. 302 and in Instructional Bulletin No. 36.

In the case of sales to governments and government agencies, no evidence of exemption is required other than the invoice indicating sale to the government or government agency. When selling to other exempt organizations, the seller should require the customer to furnish a certificate of exemption in accordance with Rule No. 302.

iii. Delivery to customer outside Maine. When a photographer or photofinisher delivers or ships tangible personal property sold to a point outside the State, the sale is not subject to Maine sales tax. If the customer takes delivery in Maine, however, the tax must be charged regardless of the ultimate destination of the products. This same rule applies to digital products sent electronically; if the

recipient is located outside of the State of Maine, the sale is not subject to Maine sales tax, but if the recipient is located in Maine, the transaction is taxable.

2. PURCHASES

As manufacturers and sellers, photographers and photofinishers are not liable for sales or use tax on the following purchases:

- i. Tangible personal property and fabrication services purchased for resale.
- ii. Machinery and equipment and parts for use by the purchaser directly and primarily in the production of tangible personal property for later sale or lease.
- iii. Tangible personal property that becomes an ingredient or component part of, or that is consumed or destroyed directly and primarily in the production of, tangible personal property for later sale or lease.

a. Purchases for resale. When a retailer purchases tangible personal property for resale, the retailer should furnish the supplier with a resale certificate as provided in Rule 301. The certificate will enable the retailer to purchase tangible personal property for resale without payment of sales tax. Only one certificate need be filed with each supplier to cover subsequent purchases. However, the retailer must state to the supplier whether or not the purchase is for resale and will be held responsible for the tax on any item purchased for resale but subsequently used by the retailer. **Purchasers who avoid payment of tax through deliberate misuse of resale certificates may be subject to criminal prosecution.**

b. Machinery and equipment. Purchases of machinery and equipment for use by the purchaser directly and primarily in the production of tangible personal property for later sale or lease are exempt from tax. Qualifying machinery and equipment normally purchased by a photographer includes cameras and related equipment; “canned” computer photography software; and equipment used in developing, manipulating, printing and mounting photographs (including digital images) for sale to customers.

This exemption does not apply to machinery and equipment used directly and primarily in fabrication of property provided by the customer when the property being fabricated is to be used by the customer rather than sold or leased. Thus, machinery and equipment that will be used primarily (more than 50% of the time) in an activity that constitutes production of tangible personal property, such as printing of photographs, is exempt from tax when purchased by the photofinisher. Machinery and equipment that will be used 50% or more of the time in performance of fabrication services, such as developing of film furnished by the customer to make negatives or slides, does not qualify for the exemption.

c. Consumed or destroyed items. Items that are consumed or destroyed directly and primarily in the production of tangible personal property for later sale may be purchased tax-free by furnishing the supplier with a blanket certificate of exemption in substantially the form set forth in Rule No. 303. Qualifying items used by a photographer include film, flashbulbs, developing chemicals, and similar items.

This exemption does not apply to items that are consumed or destroyed directly and primarily in fabrication of property provided by the customer when the property being fabricated is to be used by the customer rather than sold or leased. Thus, items such as developers, fixers, bleaches, stop baths, stabilizers and replenishers are exempt from tax if used in the production of tangible property for sale, but taxable if used in the performance of fabrication services.

Items that are consumed or destroyed other than directly and primarily in production, such as office supplies, cleaning supplies, and protective clothing, do not qualify for exemption under any circumstances.

d. Ingredient or component part. Purchases of items that will become an ingredient or component part of the finished product and are actually transferred to the customer, such as photographic paper and slide mounts, are deemed exempt as being, in effect, for resale, whether used in production or fabrication.

3. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to:

**MAINE REVENUE SERVICES
SALES, FUEL & SPECIAL TAX DIVISION
P.O. BOX 1065
AUGUSTA, ME 04332-1065
TEL: (207) 624-9693
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ATTACHMENT #1
Excerpts taken from Maine Revised Statutes, Title 36

§1752. Definitions. [Sales Tax]

The following words, terms and phrases when used in chapters 211 to 225 have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

2-A. Directly. "Directly," when used in relation to production of tangible personal property, refers to those activities or operations which constitute an integral and essential part of production, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to production.

7-B. Machinery and equipment. "Machinery and equipment" means machinery, equipment and parts and attachments for machinery and equipment, but excludes foundations for machinery and equipment and special purpose buildings used to house or support machinery and equipment.

9-A. Primarily. "Primarily," when used in relation to machinery or equipment used in production, means more than 50% of the time during the period that begins on the date on which the machinery or equipment is first placed in service by the purchaser and ends 2 years from that date or at the time that the machinery or equipment is sold, scrapped, destroyed or otherwise permanently removed from service by the taxpayer, whichever occurs first.

9-B. Production. "Production" means an operation or integrated series of operations engaged in as a business or segment of a business that transforms or converts personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed. "Production" includes film production.

"Production" includes manufacturing, processing, assembling and fabricating operations that meet the definitional requisites, including biological processes that are part of an integrated process of manufacturing organisms or microorganic materials through the application of biotechnology.

"Production" does not include biological processes except as otherwise provided by this subsection, wood harvesting operations, the severance of sand, gravel, oil, gas or other natural resources produced or severed from the soil or water, or activities such as cooking or preparing drinks, meals, food or food products by a retailer for retail sale.

17. Tangible personal property. "Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses, but does not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership. "Tangible personal property" includes electricity. "Tangible personal property" includes any computer software that is not a custom computer software program.

§1760. Exemptions

Subject to the provisions of section 1760-C, no tax on sales, storage or use may be collected upon or in connection with:

31. Machinery and equipment. Sales of machinery and equipment:

A. For use by the purchaser directly and primarily in the production of tangible personal property intended to be sold or leased ultimately for final use or consumption or in the production of tangible personal property pursuant to a contract with the Federal Government or any agency thereof, or, in the case of sales occurring after June 30, 2007, in the generation of radio and television broadcast signals by broadcast stations regulated under 47 Code of Federal Regulations, Part 73. This exemption applies even if the purchaser sells the machinery or equipment and leases it back in a sale and leaseback transaction. This exemption also applies whether the purchaser agrees before or after the purchase of the machinery or equipment to enter into the sale and leaseback transaction and whether the purchaser's use of the machinery or equipment in production commences before or after the sale and leaseback transaction occurs; and

B. To a bank, leasing company or other person as part of a sale and leaseback transaction, by a person that uses the machinery or equipment as described in paragraph A, whether the original purchaser's use of the machinery or equipment in production commences before or after the sale and leaseback transaction occurs.

74. Property used in production. Sales of:

A. Tangible personal property that becomes an ingredient or component part of tangible personal property produced for later sale or lease, other than lease for use in this State, or that becomes an ingredient or component part of tangible personal property produced pursuant to a contract with the Federal Government or an agency of the Federal Government; and

B. Tangible personal property, other than fuel or electricity, that is consumed or destroyed or loses its identity directly and primarily in the production of tangible personal property for later sale or lease, other than lease for use in this State, or that is consumed or destroyed or loses its identity directly and primarily in the production of tangible personal property produced pursuant to a contract with the Federal Government or an agency of the Federal Government.

For purposes of this subsection, tangible personal property is “consumed or destroyed” or “loses its identity” in production if it has a normal physical life expectancy of less than one year as a usable item in the use to which it is applied.

§2551. Definitions [Service Provider Tax]

3. Fabrication services. "Fabrication services" means the production of tangible personal property for a consideration for a person who furnishes, either directly or indirectly, the materials used in that production. "Fabrication services" does not include the production of tangible personal property if a sale to the consumer of the tangible personal property so produced would be exempt or otherwise not subject to tax under Part 3.

§2552. Tax imposed [Service Provider Tax]

1. Rate. A tax at the rate of 5% is imposed on the value of the following services sold in this State:

B. Fabrication services;

Relevant Rules:

#301 - Sales for Resale

#302 - Sales to Government Agencies and Exempt Organizations

#303 - Sales to Industrial Users

#304 - Sales Tax Returns and Payments

#401 - Service Provider Tax -- Return and Payment of Tax